IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Loonkaran v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.4508/1999
under Article 226 of the Constitution of India.

Date of Order : 16th January, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. R.P.S.Choudhary, Addl.Advocate General.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

The petitioner entered in the services of Government of Rajasthan being appointed as Lower Division Clerk in the year 1957. By an order dated 12.11.1970 passed by Legal Remembrance-cum-Secretary to the Government of Rajasthan, Department of Justice, appointment was given to the petitioner as Legal Assistant in the office of Government Advocate-cum-Additional Advocate General, Jodhpur w.e.f. 9.2.1970. Before proceeding further it is relevant to mention that before coming into force of Rajasthan Legal Subordinate Service Rules, 1976 (hereinafter referred to as “the Rules of 1976”), there was no specific cadre of legal assistants and appointments to the post above were used to be made departmentwise. The

respondents No.2 to 9 were also appointed as legal assistants in various departments of Government of Rajasthan on different dates prior to coming into force of the Rules of 1976. The details with regard to date of appointments of the respondents No.2 to 9 are given below:-

1.	Shri S.C.Sehgal	9.2.1970
2.	Shri M.L.Sharma	9.6.1972
3.	Shri Govind Beharilal Gupta	2.3.1973
4.	Shri Ghanshyam Pd. Gupta	23.11.1974
5.	Shri O.P.Sharma	25.11.1974
6.	Shri R.C.Gupta	12.10.1970
7.	Shri Sohanlal Gupta	4.11.1973
8.	Shri P.C.Dhamania	2.3.1974

The Rules of 1976 on their promulgation came into force on 16.2.1976. Under proviso (iii) to sub-rule(1) of Rule 7 of the Rules of 1976 method for recruitment of legal assistants appointed prior to not less than one year to 1.1.1974 is prescribed. According to it a screening committee was constituted and suitability of eligible persons was examined and they were ordered to be recruited as legal assistants under the Rules of 1976.

According to the petitioner his case alongwith the respondents No.2 to 9 was placed before the Screening Committee and they all become part of the cadre of legal assistants created under the Rules

of 1976. A tentative seniority list of such recruited legal assistants was declared by Government of Rajasthan on 4.8.1979 wherein name of petitioner was shown at Sr.No.1 and the respondents No.2 to 9 were shown juniors to him. Under the final seniority list dated 7.4.1981 published by Government of Rajasthan his seniority was underled and the respondents No.2 to 9 were placed at higher pedestal in the seniority list of Legal Assistants. The petitioner being aggrieved by the seniority list dated 7.4.1981 preferred an appeal before the Rajasthan Civil Services (Service Matters) Appellate Tribunal, which came to be decided by judgment dated 20.1.1983. Learned Tribunal while disposing of the appeal preferred by the petitioner ordered to reconvene the meeting of screening committee constituted for making appointments under Rule 7(1(b) of the Rules of 1976 and to make the appointments afresh in accordance with law. In pursuant to the judgment dated 20.1.1983 passed by Rajasthan Civil Services Appellate Tribunal, Screening Committee met afresh and considered candidatures of the persons eligible to be recruited and appointment was also given to the petitioner as legal assistant and he was confirmed on the post w.e.f. 1.4.1980, however, the respondents No.2 to 9 were not rescreened on the count that they were appointed earlier on regular basis. A seniority list dated 21.10.1989 was again published by Secretary to the Government of Rajasthan, Department of Law and Legal Affairs,

therein too the respondents No.2 to 9 were shown senior to the petitioner in the cadre of legal assistant and also as Head Legal Assistant. The petitioner being aggrieved by the seniority list dated 21.10.1989 preferred an appeal before the Rajasthan Civil Services Appellate Tribunal which was disposed of by judgment dated 28.5.1999 directing the respondent State to provide an opportunity of hearing to the petitioner and then to pass a detailed order determining his placement in the seniority list. The Secretary to the Government of Rajasthan, Department of Law and Legal Affairs in pursuant to the judgment dated 28.5.1999 referred above, passed an order dated 25.8.1999 maintaining the seniority list dated 21.10.1989. Being aggrieved by the same the instant petition for writ is preferred by the petitioner.

It is contended by the petitioner that the respondents No.2 to 9 were appointed as Legal Assistants quite later to him and, therefore, they could not be placed at higher pedestal in the seniority list of Legal Assistants appointed under the Rules of 1976. The petitioner on that basis also claimed for his promotion as Head Legal Assistant from the date of promotion as was given to respondent No.2 Shri S.C.Sehgal.

A reply to the writ petition has been filed on behalf of the respondent State and also on behalf

of respondent No.6 Shri O.P.Sharma. The State Government in its reply stated that the respondents No.2 to 9 were appointed under the recommendation of a competent selection committee constituted under Rule 17 of the Rajasthan Subordinate Service (Recruitment and other Service Conditions) Rules, 1960 prior to promulgation of the Rules of 1976, therefore, they were not required to be screened by the screening committee constituted to make recruitment in accordance with proviso (iii) to sub-rule(1) of Rule 7 of the Rules of 1976, whereas petitioner's appointment as Legal Assistant was purely on adhoc basis, that too not in accordance with law, therefore, at the first instance he became a legal assistant only under proviso (iii) to sub-rule(1) of Rule 7 of the Rules of 1976. According to the respondents he could not be treated senior than the respondents No.2 to 9. Respondent No.6 Shri O.P.Sharma alongwith reply to the writ petition placed an order of his appointment which clearly shows that his appointment was made as a consequence of regular selection proceedings in accordance with law.

This Court by order dated 21.11.2005 directed the respondents to place on record the order of appointments of respondents No.2, 3, 4, 5, 8 and 9. No direction was given to place on record the order of appointment of respondent No.6 Shri O.P.Sharma as it was already available on record being filed alongwith

reply to the writ petition. Counsel for the petitioner also stated on 21.11.2005 that no grievance survives against the respondent No.6 in view of the nature of his appointment made under the order dated 29.9.1970.

In pursuance to the order dated 21.11.2005 the respondents produced entire record of the screening committee and also the orders of appointment of respondents No.2 to 9 except the respondent No.8 Shri Sohanlal Gupta. It is stated by learned Additional Advocate General Shri RPS Choudhary that the order of appointment of Shri Sohanlal Gupta is not traceable. From perusal of record it is found that appointment to respondents Shri S.C.Sehgal, M.L.Sharama, Govind Beharilal Goyal, O.P.Sharma and P.C.Dhamania were given in accordance with the Rajasthan Subordinate Service (Recruitment and other Service Conditions) Rules, 1960 (hereinafter referred to as “the Rules of 1960”), as such, their appointments from the date of their initial appointment were regular and in substantive capacity and, therefore, they are certainly senior than the petitioner in the cadre of Legal Assistants and the screening committee rightly not screened their candidatures in accordance with the proviso (iii) to sub-rule(1) of Rule 7 of the Rules of 1976. However, appointment of Shri R.C.Gupta was not accordance with the Rules of 1960. He was also appointed by the Department of Irrigation in adhoc capacity and,

therefore, his case was required to be screened by the screening committee referred under the Rules of 1976. The respondents failed to produce the order of appointment of Shri Sohanlal Gupta, therefore, no definite opinion can be given with regard to nature of his appointment.

Be that as it may, due to non-production of order of appointment of Shri Sohanlal Gupta an inference is required to be drawn to the effect that he was also appointed as Legal Assistant on being screened by the screening committee in accordance with proviso (iii) to sub-rule(1) of Rule 7 of the Rules of 1976. The petitioner's case in any event, therefore, could not be considered less favourable than to the case of Shri R.C.Gupta, respondent No.7, and Shri Sohanlal Gupta, respondent No.8. The petitioner is required to be treated at par with Shri R.C.Gupta and Shri Sohanlal Gupta.

The instant petition for writ, therefore, is disposed of with a direction to treat the petitioner at par with Shri R.C.Gupta and Shri Sohanlal Gupta and to provide him all benefits with regard to promotion and grant of selection grades etc. accordingly.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.